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Current Topics.

Our Greatest Criminal Lawyer.

IT WAS with a mild shock of surprise that we saw the announcement on opening our morning paper a few days ago that Sir HORACE EDMUND AVORY, Justice of the High Court of Justice, was celebrating his eightieth birthday! No stranger looking in at the Lord Chief's Court would imagine that the quiet propounder of problems, whose intervention in argument touching the intricacies of criminal and local government law has so often dashed the brightest hopes of learned counsel, was in deed and in truth an octogenarian! No ordinary citizen, observing the slim upright figure striding along or across the Strand with the alertness of middle age, would accept without questioning an assertion that here is the *natu maximus* of the judicial bench! Well—thus it is. And if, in offering our respectful congratulations to the learned judge—without question the greatest criminal lawyer of his own day, and one of the greatest on the roll of fame in English criminal jurisprudence—we venture upon a strictly personal note—it is this. AVORY, J., for many years was regarded, both within the profession and outside, as a stern unbending administrator of fearsome quality, whose court was to be avoided whenever possible. How far such an estimate of the learned judge's personality was deserved may be left to the judgment of history. Certain it is that many a youthful advocate has profited in his day by cold contact with icy rebuke—and many a juryman has been brought to a judicial frame of mind by the matchless impartiality of the summing up to which he has had to listen. But of late years there has been a noticeable mellowing—a touch of keen humour—a twinkling of the eyes—that have revealed the true and innate character that all along was known only to the few, and the universal chorus of admiration and goodwill that has appeared in the daily press is the best possible index of the high esteem in which Mr. Justice AVORY is held by the nation at large. We lift our hat and wish the learned judge still many happy returns of his birthday.

Solicitors and Cabinet Rank.

THE INCLUSION of Sir DONALD MACLEAN as one of the Liberal representatives in the reconstituted Government will have been noted with satisfaction by that large class of the community who have recognised his public spirit, but probably by no section of the community will his promotion have been regarded with more pleasure than by his brethren in the solicitor branch of the profession. His aptitude for affairs, his judicial frame of mind, as shown particularly when during the war he acted as Chairman of the London Tribunal of Appeal, and the assiduity with which he performs his parliamentary duties, have marked him out as one of the leading men in politics. Curiously enough, solicitors in the past can hardly be said to have had adequate recognition in public administration, so far, at all events, as Parliament is concerned. Few have held Cabinet rank. The first to do so, as far as we can recall, was the late Viscount WOLVERHAMPTON, who as Mr., and then as Sir HENRY, FOWLER, sat for many years in the House of Commons and did valiant service in many minor offices before he was promoted to a place in Mr. GLADSTONE'S Cabinet of 1892. When the question of Home Rule for Ireland was a burning one both in the Commons and the country, the late Lord MORLEY mentioned Sir HENRY FOWLER as at that time one of the best speakers in the House, and as having made an admirably warm and convinced defence alike of the policy of the Government and of the Bill. Since that time there have been one or two instances of solicitors who have attained Cabinet rank, for example, Sir WILLIAM JOYNSON-HICKS. But why is it that in the past there has been nothing like the same number of solicitors as barristers who have reached the high places in politics? This may be accounted for by the fact that barristers have been far more numerous than solicitors in the House, and thus a tradition arose that whenever a post became vacant in which legal knowledge was essential for its due performance, it must be given to a barrister. The success which both Sir HENRY FOWLER and Sir WILLIAM JOYNSON HICKS achieved in their departments of the Governments of which they were members is demonstration, if that were needed, that the practical sagacity and aptitude for business which characterise members of the solicitor branch eminently fit them for the highest offices and for places in the Cabinet.

Land Values Tax. The Contracting-Out Problem.

WHATEVER OTHER problems may have to be solved by the legal profession in the administration of the provisions

of Pt. III of the Finance Act, 1931, it is quite certain that the relations between lessor and leaseholder are going to provide plenty of occasion for the scratching of heads and the putting on of thinking-caps. Section 20 provides that where the tax is chargeable on a leaseholder *as owner* he will have the right to recover the amount in whole or in part from his lessor. Section 26 lays it down that where by any lease entered into after the passing of the Act (July 31st was the date of the Royal Assent) it is provided that the lessee shall pay taxes and other impositions, that provision is to be valueless so far as land values tax is concerned. The intention is, of course, to make the freeholder pay the land values tax in any event; and it would seem that the section (26) aims at making it impossible for a freeholder to contract out of his obligation, by preventing a leaseholder from entering into any agreement either to pay the land value tax or to recoup the lessor in respect thereof. What the result of this will be upon market values of property it is impossible to predict. The fact that the tax at the outset is only upon a penny basis affords no criterion upon which estimates of value can be formed except for the immediate future. But why the legislature should trouble itself about the relations between freeholder and leaseholder in this matter is not easy to understand. We should have thought that all the Treasury would desire to effect would be to ensure payment of the tax—whether by leaseholder or freeholder. Can it be that the underlying idea is that freeholders will protect themselves by demanding a higher price, and thereby automatically increase the capital taxable value of the land they are proposing to lease? We do not know. In any event, the brains of conveyancers and other legal advisers are likely to be cudgelled over this point, and it will be interesting to see what emanates. Meanwhile, we recommend our readers to note the provisions of s. 28. The thirty days there referred to begin to run as from 1st September.

Ordnance Map as Evidence.

THE ABOVE is not conclusive proof of a right of way, as shewn by the recent case of *Packard* v. *Farren*, at Saxmundham County Court. The plaintiff claimed an injunction (and nominal damages) in respect of trespassing upon two of his fields, over which the defendant claimed a right of way, based upon the ordnance map and the conditions of sale under which he bought his house. Evidence for the plaintiff was given by a former owner of the estate, who stated that the defendant's house was built about 1903 as a game-keeper's cottage and that none of the land was ever dedicated to the public, as those who crossed the fields only did so with his permission. The plaintiff's own evidence was that (*a*) in 1928, the house at present owned by the defendant had been occupied by a relative, who had paid the plaintiff a nominal rent of 5s. a year for the privilege of crossing the fields; (*b*) it had been pointed out to the defendant that only the plaintiff's relatives were allowed to cross the land—as there was no right of way. Corroborative evidence was given by the plaintiff's relative, and by three old employees of the plaintiff's predecessor in title, but the defendant also called three old inhabitants, who stated that a right of way had existed for forty or fifty years. His Honour Judge HILDERSLEY, K.C., held that the defendant's claim was not established, as the evidence of the former owner was clear, and the payment of the nominal rent was important. An injunction was therefore granted, and judgment was given for £1 damages and costs.

A Witness Dies Testifying.

IN A case against a motorist for dangerous driving at Epsom, a Mr. HENRY SNOW, a member of the local council, gave evidence for the prosecution in the normal way, but suddenly collapsed during the cross-examination and died in court. The case was naturally adjourned *sine die*, and it does not appear whether it will be carried further. The value and admissibility of a dead man's evidence in such circumstances is, however, of legal interest. Those who are unaware of the enormous mass of law reports might suppose that no precedent could be found for the death of a witness actually when giving his evidence. Nevertheless, an experienced lawyer would certainly conduct a thorough search through his text-books and digests before making such an assumption, and if he did so, he would no doubt sooner or later light upon an Irish case, *R.* v. *Doolin* (1832), Jebb C.C. 123, in which the same thing happened. This was a more serious matter than that at Epsom, for the prosecution was for burglary, then a capital offence. The owner of the house attacked was a very sick man when he testified, but gave his evidence clearly until he fainted during cross-examination, and was carried out of court in a dying condition. The judge, naturally under protest from the defence, accepted the incomplete evidence, but, on the prisoner being found guilty and sentenced to be hanged, named the day some weeks in the future, and placed the legal point before a full court of twelve judges. These subsequently decided by a majority of seven to five that the conviction was right, both on this point and another, namely that there was sufficient evidence without that of the deceased man. In a civil case, sworn evidence by a deceased person in another action between the parties was held to be admissible in *Mayor of Doncaster* v. *Day* (1810), 3 Taunt. 262, being brought before the court either by the judge's notes, or the notes of any other person able to swear to their accuracy, and in *Davis* v. *Otty* (1865), 35 Beav. 208, an affidavit of a witness was received in evidence although she died before she could be cross-examined on it. In all such cases, however, the judge directs the jury that evidence untested by cross-examination must be discounted in value accordingly. The cases of witnesses going abroad before cross-examination are of course distinguishable, for there is no "Act of God" to prevent the proper sequel, and their testimony is normally rejected, as in *Dunn* v. *English* (1874), L.R. 18 Eq. 524.

"A Fraudulent Concern from Beginning to End."

SOME MONTHS ago MAUGHAM, J., made orders for the compulsory winding up of various companies which had been the vehicle for the frauds of a number of share-pushing tricksters. At the date of the making of one of those orders some of the malefactors concerned had managed to put the Atlantic between themselves and English justice. The only course open to MAUGHAM, J., was, therefore, to draw public attention to the appalling extent of public gullibility; and he expressed a view to the effect that no matter what the bench might say or the police or other authorities do, only the public could protect the public, and that frauds of the kind with which he was then dealing would continue until the plausible propagators of financial dishonesty were shown "with little courtesy to the door." The same learned judge in the case of *In re Rosey Cross Asbestos Mines of Rhodesia, Limited* (*The Times*, 21st July), again took the opportunity of severely commenting on the behaviour of the directors of the company concerned, on whom, he said, the facts, which "were very singular, reflected no credit." The facts were that the company never held an annual meeting, that the only report that it ever issued was a statutory report which was untrue, and that a resolution for a voluntary winding up was voted for, on a poll, by directors and promoters whose right to vote was, in the learned judge's view, rendered not a little dubious by the fact that they owed for unpaid calls. In making the usual compulsory order his lordship said that the company was one which, if not a fraudulent concern from beginning to end, had acted so as to throw the gravest doubts on its history, and he added that the case was one for investigation. For the public, at any rate, it is one for reading, marking, learning, and inward digestion.

Criminal Law and Practice.

FABRICATION OF FALSE EVIDENCE.—The rare offence of fabricating false evidence with intent to mislead a judicial tribunal was the subject of an appeal to the Court of Criminal Appeal on 13th July, 1931, in *Rex* v. *Fieldhouse* (*The Times*, 14th July). It appeared that on 31st July, 1928, Fieldhouse was convicted at Leeds Assizes of maliciously having set fire to a warehouse and was sentenced to three years' penal servitude. The Court of Criminal Appeal refused an application for leave to appeal against that conviction. While in prison Fieldhouse wrote a letter to a young employee at the warehouse named Hanson saying that when he came out the police would see that they had not won. On his release in December, 1930, the appellant sent for Hanson and dictated a "confession" to him. A copy of the "confession" was taken round to the police-station but the inspector took no action upon it, not believing it to have been seriously intended. A copy was also sent to the Home Office with a letter asking for a free pardon and notifying the Home Secretary of Fieldhouse's intention to apply to the Court of Criminal Appeal to re-open his appeal against his conviction for arson. The court was of the opinion that there was ample evidence on which to convict Fieldhouse of the offence of fabricating false evidence with intent to mislead a judicial tribunal and refused the application for leave to appeal. The offence is an indictable misdemeanour at common law. Lord Coleridge, C.J., in *Rex* v. *Vreones* [1891] 1 Q.B. 360, at p. 366, said "If the act itself of the defendant was completed, I cannot doubt that to manufacture false evidence for the purpose of misleading a judicial tribunal is a misdemeanour. Here, in point of fact, no tribunal was misled, because the piece of evidence was not used; but I am of opinion that fact makes no difference." The words of Lord Campbell, C.J., in *Reg.* v. *Hamp* (1852), 6 Cox C.C. 167, where he said: "It is of the highest moment that the stream of justice should not be impeded but be allowed to flow undisturbed," are singularly apt in the case under review.

A GRIEVANCE, BUT NOT "AGGRIEVED."—It is to be hoped that the case of *R.* v. *Cumberland Justices: ex parte Hepworth* (*The Times*, 31st July), will result in an amendment of the law.

The case is thus summarised in *The Times*:—

"The Court of Appeal—the Master of the Rolls, Lord Justice Lawrence, and Lord Justice Slesser—held that an applicant who had answered "No" in his application for a renewal of his driving licence to the question whether he could see 'at 25 yards in good daylight (with glasses, if worn) a motor car number plate of six letters and figures,' and had been refused a licence by the licensing authority, had no right of appeal to a Court of summary jurisdiction. The applicant had driven for eight years without accident or complaint. The Master of the Rolls suggested that the form of the question might be reconsidered."

By s. 5 of the Road Traffic Act, 1930, any person who is aggrieved by the refusal of a licensing authority to grant him a driving licence may appeal to a court of summary jurisdiction. In certain cases, a driver who has been refused on the ground of physical disability might ask to be subjected to a driving test and the authority would be bound to grant a licence if he passed the test and there were no other reason for refusal. If, however, his disability is one of those specified in the prescribed form of application, the authority must refuse the licence. By Statutory Rules and Orders, 1930, No. 938, the sight test is imposed, and failure to be able to pass it counts as a prescribed disability. Consequently, the court of summary jurisdiction held that it had no power to hear an appeal against a refusal by a licensing authority which had no option but to refuse. The Divisional Court upheld the justices' decision, and the Court of Appeal has also so decided.

If we may say so, with great respect, we do not see how they could have held otherwise. As was said in the judgment, the applicant might be a person aggrieved by a refusal if the body refusing had an option to grant or refuse, but he could not be if the justices, like the local authority, were powerless to act otherwise than as they had acted.

The Court of Appeal gave a strong hint that the regulations might be altered so as not to preclude such a driver as MR. HEPWORTH, who was described as "a capital driver and a driver of experience," merely because he could not read figures at a certain distance.

It was said, in the course of the argument, that justices in some parts of the country had entertained appeals in similar cases. If they have done so, clearly they are wrong.

The Land Value Tax.

By W. E. WILKINSON, LL.D. (Lond.),

Author of "The Land Value Tax: A Guide to Part III of the Finance Act, 1931."

V.—RETURNS TO BE FURNISHED TO THE COMMISSIONERS OF INLAND REVENUE.

MANY readers will doubtless remember the famous Form 4 which landowners were required to complete in connexion with the land values duties imposed by the Finance (1909-10) Act, 1910. It appears to be the intention to send out a similar form in connexion with the valuation of land for the new land value tax imposed by Pt. III of the Finance Act, 1931. It is provided by s. 27 (1) of the Act that the Commissioners of Inland Revenue may, by notice in writing, require the owner or occupier of any land, or any person paying or receiving rent in respect of any land (either on his own behalf or on behalf of any other person) to furnish returns giving particulars as to the ownership, tenure, situation and character of the land, the consideration (if any) paid since the 18th July, 1923, and various other particulars mentioned in the sub-section and in the first schedule to the Act. The furnishing of these particulars is likely in many cases to entail expense, especially where the deeds are in the possession of mortgagees. It will be remembered that land is to be valued for the first valuation as at the 1st January next, and it is understood that forms requiring the particulars will not be sent out before January next (see 75 SOL. J. 496).

VI.—PRODUCTION TO THE COMMISSIONERS OF INLAND REVENUE OF INSTRUMENTS TRANSFERRING LAND.

From the point of view of conveyancing, the most important provisions connected with the new land value tax are those contained in s. 28 of the Act, which require the production to the Commissioners of Inland Revenue of instruments transferring land executed on or after the 1st September, 1931. These provisions were briefly referred to in the first article in this series (75 SOL. J. 533), but in view of the immediate practical importance of the matter, it is proposed to consider the provisions more in detail.

The provisions require that *as from the 1st September*, 1931, on the occasion of—

(1) any transfer on sale of the fee simple of land;

(2) the grant of any lease of land (including an underlease or other tenancy and an agreement for a lease, underlease, or other tenancy, but not including a mortgage (s. 32)) for a term of seven or more years;

(3) any transfer on sale of any such lease;

it will be the duty of the transferee, lessee or proposed lessee, to produce to the Commissioners of Inland Revenue, within thirty days after the execution thereof, the instrument by means of which the transfer is effected, or the lease is granted

or agreed to be granted. Where, however, the instrument is first executed at a place out of Great Britain, it must be produced within thirty days after it is first received in Great Britain (s. 28 (1)).

"Land" is not defined in the Act. The term, therefore, includes "messuages, tenements and hereditaments, houses and buildings of any tenure" (Interpretation Act, 1889, s. 3). As a flat comes within this definition, the lease of a flat for seven or more years and an assignment on sale of such a lease must be produced.

What is a "transfer on sale"? The expression is not defined in the Act. Presumably a transaction which constitutes a "conveyance on sale" of land for stamp duty purposes will also be a "transfer on sale" for the purposes of s. 28. For decisions as to documents liable to stamp duty as conveyances on sale, see Alpe's "Law of Stamp Duties" (21st ed.), pp. 124 *et seq.*

The provisions of s. 28 apply only to transfers on sale and to leases for seven or more years. It will not, therefore, be necessary to produce such documents as settlements, voluntary conveyances, or assents.

The second schedule provides that the person required by s. 28 to produce any such instrument must also comply with *one* of the three following conditions, namely, either:—

(*a*) Furnish to the Commissioners with the instrument a document giving the particulars set out in the second schedule to the Act. (These particulars will be given in Form L.V.(A)); or

(*b*) Furnish to the Commissioners with the instrument a copy thereof for retention by them. (This copy will be accompanied by Form L.V.(B); Form L.V.(C) will also, in certain circumstances, have to be furnished (*infra*)); or

(*c*) Furnish on demand to the Commissioners such information as to the transfer or lease as may, within six months after the instrument is so produced to the Commissioners, be required by them.

Presumably in most cases practitioners will furnish particulars on Form L.V.(A) at the time that the instrument is produced. The form is a simple one, and the particulars are similar to those which were required to be furnished by vendors and lessors under the Finance (1909-10) Act, 1910. In addition to the description and date of the instrument and the names and addresses of the parties, particulars must be given of—

(1) *The Situation of the Land.*—The description must include any dimensions stated in the instrument and, if necessary for the identification of the land, a description of the boundaries thereof, or a plan. In the case of ordinary house property, the postal address will be sufficient.

(2) *The Estate or Interest Transferred.*—Where the transaction is the assignment or grant of a lease, or the transfer of a fee simple subject to a lease, the term of the lease, and the date of the commencement of the term, and the rent reserved must be stated.

(3) *The consideration*, stating separately (*a*) Any capital payment, (*b*) Any mortgage debt released or covenanted to be paid, (*c*) Any periodical payment (including any charge), (*d*) Any term surrendered, (*e*) Any land exchanged.

(4) Any minerals, mineral rights, sporting rights, timber or easements reserved.

(5) Any restrictive covenants or conditions affecting the value of the estate or interest transferred or granted.

If the requirements of (*a*) are not complied with, that is, where the person producing the instrument does not furnish particulars thereof, but either furnishes a copy or elects to furnish particulars within six months, and if the instrument does not contain particulars of the situation and identity of the land and of the estate or interest transferred, the person producing the instrument must furnish therewith to the Commissioners a document (signed by the transferee or lessee or by some person on his behalf and giving his address) giving such of those particulars as are not so set out. Form L.V.(C) is provided for this purpose.

A person producing any instrument who does not comply with the requirements of (*a*) or (*b*) will be deemed to have elected to comply with (*c*), that is, to furnish the particulars on demand at any time within six months. But if the instrument does not contain particulars of the situation and identity of and land and of the estate or interest transferred, the person producing the instrument must furnish such particulars to the Commissioners on Form L.V.(C) at the time the instrument is produced.

Where an agreement for a lease for a term of seven or more years has been produced to the Commissioners and the other requirements mentioned above have been complied with, the lease granted in pursuance of the agreement need not be produced, unless it is inconsistent with the agreement. But if any such lease is produced, the Commissioners will, on application, denote thereon that it has been produced (s. 28 (2)).

It is not necessary to produce to the Commissioners any instrument relating solely to incorporeal hereditaments, or to a grave or right of burial, or an instrument which is a mining lease only, or an instrument by which a mining lease only is transferred (s. 28 (3)).

The penalty for non-compliance with the provisions of s. 28 is a fine not exceeding £10 (s. 28 (1)).

No instrument required to be produced to the Commissioners will be deemed to be duly stamped for the purpose of s. 14 of the Stamp Act, 1891, unless it is stamped with the appropriate denoting stamp (s. 28 (4)).

As stated in the Official Circular, instruments may be produced at Somerset House, W.C.2, and at the City Stamp Office, 61, Moorgate, E.C.2, and at the other Inland Revenue Stamp Offices mentioned in the Circular. Instruments will also be accepted at any head or branch Post Office, or at certain Money Order Sub-offices, for transmission to an Inland Revenue Stamp Office, or they may be sent by registered post, prepaid, to the Controller of Stamps, Somerset House, London, W.C.2. (The Official Circular is reprinted in 75 SOL. J., at p. 574; see also "Current Topics," at p. 559.)

(*Concluded.*)

The Criminal Liability of Directors.

LORD KYLSANT was tried before WRIGHT, J., 21st–31st July, under s. 84 of the Larceny Act, 1861, for publishing statements in certain balance sheets in the Royal Mail Steam Packet Company, knowing them to be false, with intent to deceive, etc., and also with a similar offence in connexion with a debenture prospectus. Mr. H. J. MORLAND, an eminent accountant, was charged with aiding and abetting him in respect of the first charge only. Lord KYLSANT was chairman of the company and Mr. MORLAND its auditor. The former was found guilty on the count as to the prospectus, and, being sentenced to a year's imprisonment, has entered an appeal. Mr. MORLAND was acquitted. The case was of public interest because of the great reputation and standing of the company, and the immensity of the figures, but it is of even greater concern to directors of companies and auditors and their legal advisers in respect of the duties and responsibilities of directors and auditors as to balance sheets and profit and loss accounts, and directors as to prospectuses.

The salient facts are well remembered. The company, which of course is not a limited one registered under the Companies Acts, but constituted by charters, the earliest of the year 1839, was very prosperous before the war, and from 1911 onwards made much more profit than it paid in dividends. Actually, however, the whole difference could not be clearly discovered from the balance sheets, and the company was in a better position than they indicated. How

exactly this admittedly benevolent deception was contrived does not appear from the reports of the case, but no self-respecting director of a large and prosperous company of any experience would admit any difficulty in such a task. Boiled down, every device to this end must consist of one of two expedients, namely, depreciation of assets or over-estimation of liabilities. No one would think of making such actual and obvious mis-statements as alterations of cash balances (though of course actual debts due to the company might legitimately be written down or off if the debtors were not financially sound) so assets other than cash would remain for what may be called "treatment." One easy way would be to write off an exaggerated amount for depreciation. During the war, a prosperous company must have had a fine way of camouflaging its prosperity, so to speak, by exaggerating liability for corporation tax, excess profits duty, etc., the actual figures of which have often taken a very long time to adjust. Indeed, it came out in evidence in the present case that the Revenue authorities released to the company a sum of very nearly a million, years after the war.

After 1920, depression followed the boom in trade, and for years the company's expenditure exceeded its profits. It had an open reserve fund, and that was openly used to aid dividends. The process, however, had to be carried further for any appearance of prosperity and the method employed was, in effect, release and utilisation of the secret reserve for the same purpose. Thus dividends were kept up, but, in the phrase used by the prosecution and the judge, the company was "living on its own fat." The shareholders who, to pursue the metaphor, did not know how fat their property really was in the hey-day of its prosperity, were equally ignorant of its increasing slimness under this process, until, as the Attorney-General put it, it was little better than a skeleton. The public were of course equally ignorant. Ultimately the process came to an inevitable end when the whole of the secret reserves were used up, which happened after Lord KYLSANT had issued the debenture prospectus, the subject of the second main charge against him.

The pith of the charges was in respect of what was called during the trial "economy of fact," i.e., that the statements made, even granted that each standing by itself was true, were misleading because they omitted material information, namely, that the company had for years been trading at great loss.

As to the law, s. 84 of the Larceny Act, 1861, applies equally to chartered and limited companies. On any question of civil liability, however, it would not follow that there was the same equality, though the portions of the R.M.S.P. charters quoted in the trial as to balance sheets, reserve, etc., appeared to be similar to the requirements of the Companies Acts of 1862 or 1908.

In his summing-up, WRIGHT, J., stressed the importance of plain dealing by all directors and auditors with the shareholders of companies and observed that "if it became known that balance-sheets of English companies could not be relied on, it would be a serious thing for the country." He was, of course, careful to emphasise the fact that, for the purpose before him, he had nothing to do with any civil liability.

Both civil and criminal liability, however, concern the advisers of companies, and the situation must be considered accordingly. As to "hidden reserves," the case of *Newton* v. *B.S.A., Ltd.* [1906] 2 Ch. 378, stands as authority that a limited company may not have a fund in the nature, so to speak, of an openly hidden reserve—one revealed to the auditors, to enable them to check its proper application, but concealed from the shareholders. The reasons in favour of holding a hidden reserve were, of course, stressed by the company, and were appreciated by BUCKLEY, J., but he held that the scheme was not consistent with the Companies Acts. These reasons are so strong, however, that, deprived of the power of making an openly hidden reserve, innumerable boards have resorted to the benevolent deception of shareholders practised by the R.M.S.P. before the war, and WRIGHT, J., observed that shareholders could not complain of it. Obviously it is a practice unattended by fraud or loss. Possibly tenants for life of shares might complain that the practice prevented them having their proper dividends, but *Bouche* v. *Sproule* (1887), 12 A.C. 385, and *Burland* v. *Earle* [1902] A.C. 83, are conclusive that they must take what the company gives them.

The unloading of the secret reserve, so far as it may consist of liquid assets, to swell dividends, is a different matter. Articles 106 and 107 of Table A in the Act of 1908 required an annual profit and loss account and balance sheet respectively to be made up, and by Art. 108 they were to be circulated, but s. 113 required (and that by implication) only the annual balance sheet, duly audited. Now, by s. 123 of the 1929 Act, both profit and loss account and balance sheet are compulsory. No cases have yet been decided on s. 123, and s. 134, like the corresponding section of the previous Act, requires auditors to state in their report whether the balance sheet is properly drawn up so as to exhibit a true and correct view of the company's affairs, but there is no such specific requirement as to the now compulsory profit and loss account, though the report must be made on the "accounts examined by them," which, of course, would include such an account. It at least ought to be clear from any profit and loss account that balances drawn from reserves are not profits. Losses, of course, might be minimised in several ways, such as inadequate writing off of depreciation, and profits might be exaggerated by inflating the value of capital assets, for, as it was held in *Lubbock* v. *British Bank of South Africa* [1892] 2 Ch. 198, appreciation of capital assets, when they are realised, may properly be regarded as profit when the share capital remains intact.

Perhaps, as the result of the case, there will be more inquiry as to the item "balance" in an account at general meetings, and the phrase "balance after adjustment of reserves" may subject both directors and auditors to cross-examination. The possible unreliability of an audit owing to a false stock valuation, as in *Re Kingston Cotton Mill Company* [1896] 2 Ch. 279, will, of course, remain so long as auditors can take stock valuation straight from the directors or a managing director, without being required to make the elementary test by which, in that case, the deceit might have been detected.

The Wills and Intestacies (Family Maintenance) Bill.

By JOHN C. GARDNER, B.L., Ph.D., F.S.A.Scot., Solicitor, Stonehaven.

(*By the courtesy of the Editor of "The Scots Law Times."*)

THIS Bill, which was first introduced in 1928 by Viscount ASTOR, and subsequently in an amended form in 1930 by Miss RATHBONE, M.P., has recently been reported on by a joint Select Committee of the House of Lords and the House of Commons.

The writer had the privilege of receiving from Lord ASTOR a copy of the Bill in its original form, in which the direct objects of securing proper provision for the family and dependants of a testator were to be achieved by adopting in part the Dominion method of authorising the court to interfere if the will did not comply with the requirements laid down in the Bill, and by conferring powers on the personal representatives. The specific requirements for wills laid down in the Bill were regarded as an adoption of the Scottish precedent of legal rights in succession. The principal effect of the Bill was intended to be that testators would not make capricious or unreasonable wills, knowing that such a course would inevitably lead either to a compromise by the personal

representatives (power to do which was conferred on them) or in the last resort to rectification by the court.

It was pointed out in the prefatory memorandum to the Bill that the latter did not attempt to curtail testamentary powers of disposition by conferring inalienable rights on members of the family, such as were at one time in force in England; that on the contrary the Bill created no beneficial interests but merely conferred powers. The following principal objections, however, occurred to the writer: while the direct intention of the Bill was to secure that proper provision be made for the surviving spouse, issue and dependants of a deceased, it indirectly instructed a testator how to make his will, and provided various recourses which might be resorted to if he failed to make it on the lines indicated. Legislation of such a nature could scarcely fail to be rather elaborate and complicated, and this appeared to be recognised to some extent by the compilers of the Bill in the general remarks at the end of the separate detailed memorandum relating to the Bill. Indeed it occurred to one that the rules to be observed in making a will were so complicated that it would be quite easy for a testator (even with the best intentions) to unwittingly infringe them. And the remedy of taking proceedings in the Chancery Division of the High Court, in the event of failure to compromise, was an expensive one which might not readily be acceptable to the persons seeking relief.

Apart from these considerations, one could not help wondering why the compilers of the Bill had not simply attempted to revive the legal rights in succession which at one time existed in England, and which system still works perfectly satisfactorily in Scotland. Not only has this system the merit of simplicity but it is one of the fundamental principles of the early laws of succession in most of Northern Europe as well as in England. A right of succession, or, perhaps more correctly, of division in the estate of a deceased in favour of the surviving spouse and children (and independently of the later theory of communion of goods) was recognised long before testation was known in Northern Europe, and, when testation was introduced, freedom of testing was necessarily limited by the existence of these rights. This was the case in England also until these rights fell into desuetude or, as in certain parts of the country, were expressly abolished by statute.* The writer therefore ventures to suggest (if he may do so without being accused of a bias in favour of the Scottish system) that it would be sounder and more satisfactory legislation to re-establish in England these rights, for the abolition of which there does not appear to have ever existed any good reason.

The amended Bill, as presented by Miss RATHBONE, and as reported on by the Joint Select Committee, contains considerable alterations, but is substantially on the same lines as the original Bill. The amended Bill secures on the death of a spouse leaving a will certain fixed interests in the estate disposed of by will to the surviving spouse and any surviving children, who are below the "defined age," or if above that age are physically or mentally incapable of self support. The "defined age" is interpreted as the age reached two years after the completion of the child's full time education, or the age of twenty-three, whichever first occurs. Under the amendments, which the promoters of the Bill were prepared to make in view of criticisms made on the second reading of the Bill in the House of Commons, the class of children over twenty-three years of age entitled to benefit is widened so as to include all children who are for whatever cause not reasonably capable of self support. The rights conferred on spouses and children are rights of income only and real estate is treated on the same basis as personal estate.

The amended Bill is not free from the complications of the original, and these, together with the expense of carrying out its provisions, seem to have formed a serious objection in the eyes of the Committee. Indeed, it is stated in the report that they were impressed with the evidence of the Public Trustee as to the difficulty of carrying out certain provisions of the Bill. It is nearly always difficult to alter the existing law, and this difficulty is increased if the alteration is to be effected by complicated constructive new legislation. Alteration by gradual and simple modification is always easier to achieve, and one feels that, apart from the difficulty in carrying out the provisions of this Bill *per se*, it is too elaborately constructive to be readily acceptable to the conservatism of legislators.

In their report, the Committee recognise the existence of two other and different principles in regard to restriction of the power of disposal by will. The first of these, they say, is based on the theory of community of property in the family, or, as it may also be expressed, the theory of the partnership of marriage, and illustrations of this principle are to be found in Scotland and most of the continental countries, where it has existed for centuries. The other principle is that no spouse is entitled to exercise the power of disposal by will so as to leave his or her surviving spouse and children without adequate means of support, and this is usually made effective by entitling the surviving spouse or child, who is without adequate means of support, to secure from the court an order for payment of a reasonable sum, either as a periodical allowance or as a lump sum, having regard to the standard of living of the family and the amount of the deceased's estate. Illustrations of this principle under varying conditions are to be found in New Zealand, Australia, and some of the Canadian provinces.

Although the Committee state that the Bill proceeds upon a modification of the first principle, it appears to the writer to be equally based on the second, and in the prefatory memorandum to the original Bill the compilers expressly state that they are adopting the Dominion method of interference by the court to secure the objects of the Bill.

Apart from this question, it is of particular interest to find that practically the same result is achieved by two principles whose origins lie so far apart. For the first principle has its origin in the earliest foundations of jurisprudence when individual ownership of property was unknown and ownership only by groups existed—the family being at a certain stage a recognised unit in group ownership. The second principle, which is based on equity, has arisen, it might almost be said, through over-development of the idea of individual ownership, which has tended in some countries to allow a testator a complete and unfettered disposition of his estate at his death, even in defiance of what are recognised as his natural obligations.

It could be argued that the Scottish system has the effect of preventing at the outset a testator from ignoring his obligations to his or her surviving spouse and children, whereas the Dominion system provides only a cure. On the other hand, there may be occasions on which either the surviving spouse or children do not deserve nor require any share of the testator's estate, and in such cases it would appear that under the Dominion system the court would take such facts into consideration if an attempt were made to break the will, whereas no such equitable considerations can have any place in the Scottish system.

At any rate, the Joint Committee, in reporting that they do not consider that legislation on the lines of the Bill would be justified, are of opinion that a surviving spouse or child who is left without adequate means of support owing to the terms of a deceased's will, should be able to obtain such means of support by application to the court, the amount to be measured by the amount of the estate and the circumstances in which the family had been living, and they consider that a measure on these lines would be worthy of serious consideration by Parliament. This is showing a decided preference for the Dominion system as opposed to the Scottish system. Apart, however, from the relative merits of these two systems,

* See "The Origin and Nature of the Legal Rights of Spouses and Children in the Scottish Law of Succession," by the Author. W. Green & Son, Ltd.

the idea that a testator should have an unfettered power of disposal of his estate appears to be, as a general rule, contrary both to the original principles of testate succession and equity, and it is to be hoped that Lord ASTOR will not abandon his efforts to rectify this anomaly in English law, the more so as it is not really fundamental to the jurisprudence of that country, although it appears to have now come to be regarded almost in that light.

Company Law and Practice.

XCIII.

(*Continued from p.* 583.)

ISSUE OF SHARES.

WHILE it is purely a decision on the construction of a particular set of articles, the case of *Mosely* v. *Koffyfontein Mines Limd.* [1911] 1 Ch. 73; [1911] A.C. 409, is one which deserves some consideration, in that it shows that the creation and the issue of shares are two distinct operations, a point which is sometimes apt to be overlooked when considering, in particular, the powers of the directors and the powers of the company when an increase of capital is contemplated.

The original articles of Koffyfontein Mines Limited provided, by Art. 53, that the company in general meeting might increase its capital by the creation of new shares. Subsequently this article was duly altered so as to read that the company by resolution of the directors might increase its capital by the creation of new shares. The only other article material for this purpose was one which provided that any new shares might be issued . . . generally on such terms as the company might from time to time by resolution of a general meeting declare. Not much more than a year after the alteration of the articles above referred to, the directors passed a resolution increasing the capital of the company by the creation of 75,000 new ordinary shares of £1 each; and these shares, or at any rate some of them, were issued and allotted. Some seven years later the directors passed another resolution further to increase the capital; nearly six years after this the plaintiff in this action issued his writ, claiming, amongst other relief, a declaration that the directors had no power to issue any new shares in the company, and an injunction to restrain the defendants from issuing or dealing with any new shares.

It was held both by the Court of Appeal (reversing the decision of EVE, J.) and by the House of Lords that the new shares could not be issued without the resolution of a general meeting passed in accordance with the provisions of the second of the two articles above referred to. The result is somewhat curious, but as was pointed out both by the Court of Appeal and by the House of Lords, it is a result applicable only to these particular articles; but the distinction is drawn throughout between creation and issue of shares. Indeed, FARWELL, L.J., goes further than this, and says that "creation," "issue" and "allotment" are used with three different meanings familiar to business people as well as to lawyers, quoting from the judgment of STIRLING, J., as he then was, in *Spitzel* v. *Chinese Corporation*, 80 L.T. 347, at p. 351, this passage: "What is an allotment of shares? Broadly speaking, it is an appropriation by the directors or the managing body of the company of shares to a particular person." Now the difference between creation and the other two words is plain, but the distinction between issue and allotment is not so plain; perhaps, however, it can be looked at in this way, that an offer to allot shares constitutes an issue. Lord SHAW OF DUNFERMLINE says, in his speech in the House of Lords, at p. 410, "the issue of shares, as apart from the creation, is a most important transaction," and this is a statement which the company lawyer will do well to bear in mind, obvious as it may appear to be.

But *Mosely* v. *Koffyfontein Mines* raised, and, indeed, it is submitted, decided another question of interest which is now to some extent academic, but deserves some examination, and that is, whether the company could properly delegate to its directors the powers conferred upon it by statute of increasing its capital. The appropriate section in that case was s. 12 of the Companies Act, 1862 (thus showing that the question may yet arise once more, as in *Mosely's Case* it arose on a section of the Companies Act, 1862, after its repeal by the Companies (Consolidation) Act, 1908) which, so far as material, provided that a company might, if authorised by its regulations, increase its capital. It may be appropriate here to say that s. 50 of the Companies Act, 1929, which now confers the power of increasing capital, expressly provides, by sub-s. (2), that the power must be exercised by the company in general meeting. It was argued in the Court of first instance in *Mosely's Case* that the directors could not increase the capital, which was an operation for the company in general meeting alone, and one which could not be delegated to the directors.

EVE, J., held that the directors could exercise the power of increasing the capital if it was conferred on them by the articles, and that the company could properly confer such a power by the articles; but neither in the Court of Appeal nor in the House of Lords was this point dealt with, as it was unnecessary on the view there taken to decide it. Accordingly, this part of the decision of EVE, J., would appear to be good law, so far as it may be still capable of application, notwithstanding s. 50 (2) of the Companies Act, 1929. The same view was taken in *Attorney-General* v. *Anglo-Argentine Tramways Co. Limd.* [1909] 1 K.B. 677, a case which has come in for much criticism (though not on this point) and finally received the disapproval of LAWRENCE, L.J., in *A.-G.* v. *Tube Investments Limd.* (1930) W.N. 59. In the *Anglo-Argentine Case* the articles gave the directors power, with the sanction of a general meeting, to increase the capital of the company by the creation and issue of new shares. The decision was purely one of the stamp laws, but no question was apparently raised as to whether this article was proper or not.

(*To be continued.*)

A Conveyancer's Diary.

The Over-reaching Powers under the L.P.A.

In my articles for the past two weeks I considered the position of new trustees who were statutory owners and what deeds were required to enable them to convey a legal estate to a purchaser in exercise of the statutory powers conferred upon a tenant for life. In connexion with that, it may be of interest to consider generally the question of the over-riding powers conferred by the L.P.A., 1925, and the S.L.A., 1925.

This is a subject which has often been discussed, but I think that it is worth while referring to it again, if only that we may be reminded of the so-called "curtain provisions" of what we have become accustomed to call "the new Property Acts." It is, I think, as well to take stock, as it were, of those provisions from time to time, and to note any judicial decisions which may be relevant.

The so-called "curtain provisions," which are contained in s. 2 of the L.P.A., 1925, are in fact only an extension of the over-riding or as we now (for some unexplained reason) say "over-reaching" provisions of earlier statutes, or of equitable doctrines which have long been established, the extension being doubtless important, but not involving any alteration in principle.

Section 2 of the L.P.A., 1925, enacts that a conveyance to a "purchaser" of a legal estate shall over-reach any equitable

interest or power affecting that estate if (1) the conveyance is made under the powers conferred by the S.L.A., 1925, and the equitable interest or power is "capable of being over-reached" thereby and the statutory requirements of the Act are complied with, and (2) the conveyance is made by trustees for sale and the equitable interest or power is "capable of being over-reached" by the trustees and the statutory requirements are complied with, and (3) the conveyance is made by a mortgagee or personal representative in exercise of paramount powers and the equitable interest or power is "capable of being over-reached" by the conveyance and the purchase money is paid to the mortgagee or personal representative, and (4) the conveyance is made under an order of court, and the equitable interest or power is bound by the order.

(1) *With regard to the powers conferred by the S.L.A.*, 1925.

In the first place it must be observed that those powers only over-reach any equitable interest or power which is "capable of being over-reached" thereby.

I think that the expression "capable of being over-reached" is an unfortunate one. It has not been the subject of any judicial construction, but I have no doubt that we must refer to s. 72 of the S.L.A. to find what the meaning of it is.

Stated shortly, that section provides that on a sale or other disposition the tenant for life may effect the transaction by deed to the extent of the estate or interest vested or declared to be vested in him, and that such deed shall be effectual to pass the land discharged from all the limitations, powers and provisions of the settlement and from all estates, interests and charges subsisting or to arise thereunder except (i) legal estates and charges by way of legal mortgage having priority to the settlement, (ii) legal estates and charges by way of legal mortgage which have been conveyed or created for securing money actually raised at the date of the deed, and (iii) leases and grants at fee farm rents and grants of easements, etc., which (*a*) were granted before the date of the deed for value in money or money's worth, or agreed so to be, by the tenant for life or statutory owner or trustees acting under statutory or other powers, and (*b*) are protected by registration under the L.C.A., 1925, if capable of registration thereunder. But a conveyance will over-reach an annuity or a limited owner's charge or a general equitable charge, although registered under the L.C.A., 1925.

Such then are the equitable interests or powers which are "capable of being over-reached" by a conveyance to a purchaser under the powers conferred by the S.L.A., 1925.

Further, "the statutory provisions of the Act must be complied with."

It is not always an easy matter to say when this has been done. Last week and the week before I dealt with the question whether a vesting deed is required on the appointment of new trustees where the trustees are statutory owners. That affords an illustration of the difficulties which arise.

Another example is to be found in the interesting case of *Caley* v. *Evans* [1930] 2 Ch. 143. In that case there was a compound settlement consisting of (1) a settlement, (2) a deed of appointment of a jointure made under the powers conferred by the settlement, (3) a disentailing assurance executed by the person who had become tenant in tail in possession under the settlement subject to the jointure, and (4) a resettlement. All these were dated before 1926. There was a sole surviving trustee of the original settlement, who was also one of the two trustees of the resettlement.

That being the state of facts existing at the commencement of the S.L.A., 1925, the two trustees of the resettlement executed a vesting deed, for the purpose of giving effect to the settlement, as provided by the 2nd Sched., para. 1 (2), of that Act.

The vesting deed recited the resettlement and referred to it as "the settlement"; the name of the tenant for life; and that the trustees of the resettlement were the trustees of the settlement for the purposes of the S.L.A. The deed declared that the settled land was vested in the tenant for life and that he should stand possessed thereof upon the trusts and subject to the powers and provisions upon and subject to which under the settlement or otherwise the same ought from time to time to be held, and that the trustees of the resettlement (naming them) were the trustees of the settlement for the purposes of the S.L.A., 1925. No mention was made of the original settlement although there was a reference to the jointure.

The question was whether this deed was a sufficient compliance with s. 5 of the S.L.A. Bennett, J., held that it was not. His lordship considered that as the vesting deed was undoubtedly framed upon the footing that the only relevant settlement was the resettlement and it was executed by the trustees of that settlement in their capacity as such and without any reference to any other settlement, the deed was not a compliance with the requirements of the Act in reference to the compound settlement.

I ventured to doubt the correctness of this decision soon after the report appeared, and have no reason to alter my view. Whether right or wrong, the case is a good illustration of the pitfalls which beset the conveyancer in his attempt to ensure that the statutory provisions of the Act are complied with.

Apart from that, there is the question who is or is not a tenant for life or has the powers of a tenant for life, and who is a statutory owner upon whom the powers of a tenant for life are conferred.

There have been many cases on that point.

One of the earliest cases is *Re Frewen* [1926] Ch. 580, in which it was held that a person who was entitled to two-thirds of the income of the settled land, the remaining one-third of the income being subject to a trust for accumulation during his life, was not a person having the powers of a tenant for life under s. 20 (1) (viii) of the S.L.A., 1925, but that the trustees of the settlement had such powers by virtue of s. 23 (1) of the Act. That case was rather a curious one. In effect, the person entitled to two-thirds of the income was entitled to the whole income subject to a trust to accumulate a part, and it might have been thought that he was "a person entitled to the income of land . . . subject . . . to a trust for accumulation of income . . ." within the meaning of s. 20 (1) (viii). The contrary was held, however.

Another of the earlier cases which is of interest is *Re Llanover's Settled Estates* [1926] Ch. 626, in which it was held that where the income devised (before 1926) to trustees was undisposed of during certain lives and resulted in possession to the testator's heir-at-law during those lives, the heir took the income under an implied or constructive trust for payment to him during those lives, and therefore under a trust within the meaning of s. 20 (1) (viii) of the S.L.A., read with the definition of "trust" in s. 117 (1) (xii), and had consequently the powers of a tenant for life.

On the other hand, where a testator (who died before 1926) devised real estate to the trustees of his will upon a discretionary trust to pay the income to a person during his life, but did not dispose of any income not so paid, it was held by Clauson, J., that the heir-at-law had not the powers of a tenant for life, his interest being too shadowy and insubstantial (*Re Alston-Roberts-West's Settled Estates* (1928) W.N. 41).

I must postpone the further consideration of this subject to another week.

Literary Note.

We understand that The Rt. Hon. J. Ramsay MacDonald has accepted the dedication of the "Trial of James Stewart," edited by David N. Mackay, which is about to appear in the Notable British Trials Series. The story is, of course, familiar to all students of Scottish history.

Landlord and Tenant Notebook.

Determining the Usual Covenants.

A contention that the phrase "the usual covenants" is a short way of expressing a well-settled group of five specific covenants (just as, say, "the usual quarter-days" indicates four specific dates) has long ceased to be maintainable. Those driven to support it have relied on cases like *Hampshire* v. *Wickens* (1878), 7 Ch. D. 555, C.A., but any arguments advanced have divorced passages from contexts. It is true that in the case cited, Jessel, M.R., cited with approval the list of five usual covenants given in the then latest edition of "Davidson's Precedents"; but earlier in his judgment he pointed out that the usual covenants may vary in different generations, and the statement in Davidson was itself qualified by a saving as to special circumstances justifying the introduction of other covenants.

The learned Master of the Rolls said that the special circumstances referred to were circumstances peculiar to a particular trade. Other authorities appear to take the view that the circumstances were those of the agreement calling for lease or assignment, and the question whether contemporary usage was the only factor to be considered when determining the usual covenants was, until recently, not an easy one. The point would most commonly arise in cases in which the issue was whether, in leases of particular classes of property, a named covenant was or was not usual. The decisions reported related either to facts complicated by the express insertion, in the agreement, of words suggesting particular covenants, or to rulings that a particular covenant was not a usual one, in which case the enunciation of the general principle might only be found in an *obiter dictum*. Thus, Lord Eldon said, in *Church* v. *Brown* (1808), 15 Ves. 258, at p. 269: "Is it to depend upon the nature of the property? Is an agreement for the lease of a public-house . . . to be executed in a different manner from an agreement as to property of another species . . . ?"; but as against this there was the judgment of Lord Tenterden, C.J., in *Bennett* v. *Womack* (1828), 7 B. & C. 627, at p. 629: "Now that which is usual in leases of one description of property may not be so in leases of another, and I therefore think we are bound to take into consideration that this was a lease of a public-house." In the recent case of *Allen* v. *Smith* [1924] 2 Ch. 308, the point was not argued, but in giving judgment, Eve, J., considered the nature of the leasehold interest, its length, and the state of repair all material when deciding whether a covenant to pay the costs of forfeiture notices in any event was usual.

A second difficulty which has given rise to much discussion is the question whether the determination of usual covenants is a question of fact or one of law. In *Brookes* v. *Drysdale* (1877), 3 C.P.D. 52, the question whether a particular stipulation was usual in leases of licensed premises was indeed left to the jury; but in that case the words of an agreement for sale described the covenants as "common and usual in leases of public-houses," and the matter is somewhat different when an ordinary open contract mentions no covenants at all, and the grantor then insists and the grantee refuses to accept a particular covenant. Moreover, the point is then usually decided by a Chancery judge on an originating summons.

These two difficulties may be said to have been practically removed by the short but comprehensive judgment of Maugham, J., in *Flexman* v. *Corbett* [1930] 1 Ch. 672. The claim was for specific performance of an agreement to assign a London residence, the purchaser having objected, *inter alia*, to a covenant against annoyance, etc., of occupiers of neighbouring premises, the existence of which had not been disclosed to her at the time of the contract. The underlying principle applied by the learned judge was that the ultimate question was whether the form of the covenant was such as to constitute a defect in the subject-matter of the contract; consequently, that the true test was whether the provision was one which should be anticipated. "Usual" meant "occurring in ordinary usage," and if a great majority of leases of property of the same kind, let for the same purpose, and in the same district, contained a particular covenant, that covenant was a "usual covenant." The evidence relevant to such an issue would be the evidence of conveyancers; it would be permissible to examine books of precedents; and evidence might also be heard of the practice in the particular district. The judgment thus contains useful guidance to the practitioner. Applying the principle enunciated to the facts of the case, his lordship held that the view expressed in older cases as to what were usual covenants in leases of houses for residential occupation in London, "if not elsewhere," required reconsideration at the present time in the light of existing practice; and that a covenant against annoying one's neighbours, though it would rightly be considered usual in the case of a large estate, was not reasonably to be anticipated in other cases.

The judgment also lays down that the question whether a covenant be usual is one of fact. It is, perhaps, not a question that many people would want to have submitted to a jury, but the ruling is, of course, of importance to those concerned with appeals.

Our County Court Letter.

WIFE'S LIABILITY FOR NECESSARIES.

(*Continued from* 75 Sol. J. 229.)

II.

The effect of a cessation of co-habitation has been considered in two recent cases. In *Arberj & Son* v. *Irvine*, at Wantage County Court, the claim was for £40 4s. for drapery supplied, the plaintiffs' case being that they had sent accounts for five or six years to the defendant, who had always paid with her own cheques, without mentioning her husband. Judgment was therefore given for the plaintiffs, but the defendant appealed on the ground that, as her husband had been employed as a racing secretary, he had urged her to shop locally, and most of the goods were supplied before she obtained a decree *nisi*. Mr. Justice Swift pointed out that (1) in many households, money went from the husband's income into the wife's bank account, out of which she paid for the household necessaries, (2) the wife was her husband's agent in all household matters and could pledge his credit during co-habitation, (3) although the husband had left the district and had been divorced, he could have had no answer, if sued, but the plaintiffs had alleged that the defendant was personally liable, (4) there was no evidence that she intended to pledge her own credit. The appeal was therefore allowed, and Mr. Justice Charles concurred in entering judgment for the defendant, with costs.

In *Keightley and Co.* v. *Copley*, at Boston County Court, the claim was for £4 9s. for drapery goods sold to the defendant's wife, the plaintiffs' case being that, as she had been persuaded to go to another town upon the pretext of a holiday, she was unaware that a separation was impending. Her evidence was that she had subsequently forced her way back into the house, but, although there had been no agreement or separation order, she had ceased to live with her husband. The defendant's case was that (1) he had always made his wife an adequate allowance, (2) he thought the plaintiffs' account had been paid at the date of the separation. His Honour Judge Langman observed that, although the defendant's wife had behaved in an extraordinary fashion, she had authority to pledge her husband's credit at the relevant dates, and the prices were not extravagant. Judgment was therefore given for the plaintiffs, with costs, it being pointed out, however, that the judgment did not apply to any other goods than those in dispute.

THE LIABILITIES OF GLIDING CLUBS.

In *Hurley & Son* v. *Thomas*, recently heard at Bridgend County Court, the claim was for £23 in respect of repairs to the wings of a glider. The latter had been lying dismantled in the garage of the defendant, who asked the plaintiffs to repair the wings—no mention being made of where the glider came from or how the accident had happened. The account was duly sent to the defendant, who later stated that he was merely acting as agent, and that the Cardiff Gliding Club was responsible. The defendant's case was that, being a motor and aeronautical engineer, he had acted in an advisory capacity to the club (of which he was an honorary member) and he understood from the secretary that the club were prepared to pay, but required further credit. The secretary stated, however, that the club were not in a position to admit liability, and had applied to a third party to pay the account. It was contended that the plaintiffs had always been aware that the club owned the glider, but His Honour Judge Rowland Rowlands observed that, when a person gave orders for work, he was liable for the cost, and judgment was therefore given for the plaintiffs, with costs.

Practice Notes.

PETITION TO RESTORE COMPANY TO THE REGISTER OF COMPANIES.

On the hearing of a petition asking that the court might order the name of a company to be restored to the register of companies under s. 295 (6) of the Companies Act, 1929, Luxmoore, J., directed that an affidavit should be filed proving that notice of the petition had been given to the Treasury Solicitor and that the Treasury Solicitor had stated that no objection was taken on behalf of the Crown to the order prayed for being made. The order should be prefaced by a recital to that effect. ([1931] W.N. 199.)

PROBATE ENGROSSMENTS.

The Senior Registrar has directed that, where an engrossment copy of a will is required to be lodged in the Principal Probate Registry in connexion with the photostat process, an engrossment copy for this purpose should be made in the same manner as the engrossment formerly annexed to the grant. Matters such as the signature or initials of testator and witnesses at the end of each page of the original will should not be reproduced in the engrossment copy. A sufficient margin should be left at the top, bottom and sides of the paper used for the purpose of the engrossment to permit the reproduction of the copy will, without reduction of size, within the "frame" of the engrossment annexed to the grant. For this reason it is desirable, but not essential, to use engrossment sheets for the purpose of the engrossment copy.

Reviews.

The Land Value Tax. By W. E. Wilkinson, LL.D. (Lond.), Solicitor of the Supreme Court. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

Whatever may be said for or against the land value tax from a political and economic standpoint, it is quite certain that the legal profession will find in the complex and often obscure provisions of Pt. III of the Finance Act, 1931, material for abundant activity. To the solicitor, especially at the outset, and before judicial interpretation comes along, it is of the utmost importance that safe guidance be provided to enable him to advise his client upon the problems that will inevitably arise in practice. Such guidance will be found in the concise and practical volume before us. Mr. Wilkinson's work shows a grasp of the subject that indicates a close study of the parliamentary debates out of which the land value tax provisions have emerged. He indicates with admirable clearness the principal problems that have to be faced and the lines to be followed in giving these problems consideration. No better illustrations of the author's grasp of his subject can be cited than are to be found in the notes to ss. 20 and 26: The former dealing with recoupment of tax by lessors to leaseholders and the latter with the non-liability of lessees to pay the land values tax even though their leases so provide. The whole subject of the mutual relations between lessor and lease-holder, involving the complex problem of contracting out, will need the most careful handling. In the volume under review the text of Pt. III of the Act is set out in bold type, each section carefully annotated. There is an admirable introductory summary, a careful study of which will give the practitioner a complete simplified view of the whole situation and will enable him, at a minimum of trouble, to reach the kernel of each problem that needs to be cracked. We predict a wide demand for this very handy volume.

The Acts relating to Estate, Legacy and Succession Duties. By (the late) Alfred Hanson, of the Middle Temple, Barrister-at-Law, Controller of Legacy and Succession Duties. Eighth edition, by Francis H. L. Errington, M.A., Barrister-at-Law and Bencher of Lincoln's Inn. 1931. Royal 8vo. pp. lii and (with Appendices and Index) 663. London: Sweet & Maxwell, Ltd. £1 15s. net.

It is rather amazing that Mr. Errington should have found time to edit a further edition of this well-known work. The profession is indebted to him for having done so. "Hanson" is certainly the most authoritative, as it is the most exhaustive, treatise on the subject of death duties. In the present edition the learned editor has expended a vast amount of learning on the subject, and brought the book up to date in a manner which was only to be expected of him. In the preface to this edition the learned editor strays somewhat into the political sphere. Whether we agree with him or not, we must view with respect the opinion of so learned and experienced an authority, although, perhaps, regretting that a purely legal treatise of such value should be prefaced by what appears to be a somewhat biased expression of opinion regarding the social effect of death duties as now imposed. That is a matter of practical politics with which the lawyer, as such, is not concerned. "Hanson" remains, however, the classic on its subject, and this edition is worthy of its predecessors. Beyond that recommendation cannot go. The book is excellent in the make-up and printing, and the index has been well done.

Books Received.

The Landlord and Tenant Act, 1927. With Notes on the sections, the Text of the Act, and Appendices, Forms, Rules and Cases. S. J. P. Merlin, Barrister-at-Law. 1931. 2nd Edition. Demy 8vo. pp. xxii and (with Index) 227. London: Waterlow & Sons, Ltd. 10s. net.

Leake on Contracts. Eighth Edition, 1931. By R. R. A. Walker, Barrister-at-Law. Royal 8vo. pp. ccxciv and (with Index) 1088. London: Stevens & Sons, Ltd. 45s. net.

International Law in Peace and War. Part I. By Axel Möller, Dr. Juris. Translated by H. M. Pratt, Barrister-at-Law. 1931. Royal 8vo. pp. xxviii and (with Index) 355. London: Stevens & Sons, Ltd. 20s. net.

A Miscellany of Frauds and Defalcations. By G. R. Freeman, F.C.A. 1931. Crown 8vo. pp. 23. London: Gee & Co. (Publishers), Ltd. 1s. net.

Income Tax Up To Date. By H. J. Gully, F.C.A. 1931. Demy 8vo. pp. 24. London: The Financial News. 9d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Transfer of Investments to Beneficiary—Incidence of Costs, Fees and Stamps.

Q. 2272. A and B were entitled under a will to the residue of an estate. A was entitled to a two-fifth share, which had to be retained in trust, and B was absolutely entitled to the remaining three-fifth share. The executors were in a position to divide up a portion of the residue, which consisted of stocks and shares. As B desired to take his three-fifths share of the stocks and shares in specie, as they were then at a low value and a realisation was not desired, the executors divided the stocks and shares into two-fifths and three-fifths shares and transferred to B the stocks and shares representing his three-fifths share. The executors sold the stocks and shares representing A's two-fifths share. The executors prepared, stamped and lodged the transfers and obtained the new certificates, which were handed to B. Answers to the following questions are desired. Should B or the residue bear the following costs :—

(1) The executors' charges for preparing the transfers to B.

(2) The executors' charges for lodging the transfers to B and collecting the new certificates.

(3) Stamp duties and transfer fees.

If B had desired his three-fifths share in cash all the stocks and shares would have been sold and the proceeds divided into two-fifths and three-fifths.

A. The Council of The Law Society, in their opinion of 18th January, 1907, see "Law Practice and Usage in the Solicitor's Profession," 1923, para. 1041 at pp. 277 and 278, have expressed the view that the costs of preparation of transfers and correspondence, and stamps and brokers' fees relating to the transfer of investments forming part of a testator's estate to a beneficiary in satisfaction of his share of residue are properly payable out of the general residuary estate. The reply to the specific questions is, therefore, that all the enumerated charges and expenses are properly payable out of the residue. The ultimate result of this will be that they will fall upon A's settled share and B in the proportions of two and three-fifths respectively.

Covenant that no Beer, Spirits, Wine, etc., should be Sold on Certain Premises—Off-licence—Breach—Waiver.

Q. 2273. A lease granted in 1868 contained a covenant by the lessee not to use the premises for a public-house or beer-shop. The lessee sub-demised the premises. At the instance of the sub-lessee, in 1906 and again in 1913, a licence to carry out alterations was obtained from the lessors, and each licence contained a covenant by the lessee and his underlessee that no wine, beer, spirits or other intoxicants should be sold or dealt in on the premises, and no noisy, noisome or offensive trade or business should be carried on upon the premises. An underlease of the sub-lease was made, and from at least some time prior to 1908 part of the premises were used as wine and spirit stores, an off-licence having presumably been obtained. Arrangements are being made for the surrender of the sub-lease and underlease of it and grant of a new underlease which will be much to the advantage of our client, the lessee. We are in doubt, however, whether the business being carried on is a breach of the covenant. Is the business of an off-licence a breach of the covenant ? Can you please quote us any decision on the point ? Also has the covenant been waived ? The agents of the lessor must have known, but we have not direct evidence they so did. Would knowledge and waiver be assumed after all the years from 1908 ?

A. (1) We express the opinion that there is a breach of covenant. See *Fielden* v. *Slater* (1869) L.R. 7 Eq. 523.

(2) We see nothing in the facts before us to lead us to consider that the covenant has been waived. There is, as a general principle, no complete waiver where the breach of covenant is of a continuing nature.

Mortgage in Breach of Trust—Sale by Mortgagee—Validity of Title of Purchaser.

Q. 2274. A, B and C being trustees of the will of D, deceased, deposit deeds of property with a bank to secure an account with B, who is also one of the beneficiaries. In the event of the bank calling on B to discharge his overdraft, and, on his failing to do so, the bank realising the property, can they give a good title to a purchaser under the power of sale contained in the charge, in view of the fact that it is presumably a breach of trust of the trustees to have deposited the deeds in this manner ? If so, will you please supply the necessary authority ?

A. As the bank must have had notice of the breach of trust, we see no reason to suppose that it will be in a position to confer a good title. We would add that, as the charge was presumably of an equitable nature only, the bank will not be able to assure more than an equitable interest, even if the charge was under seal, unless it contained either a power of attorney or declaration of trust in the common forms.

Mortgage by Demise—Surrender of Occupation Lease to Mortgagor—Merger.

Q. 2275. A acquires the fee simple in several plots of land which are subject to leases for ninety-nine years (with only a few years unexpired) at a yearly rent. At the same time he executes in favour of a building society a mortgage by demise of the properties comprised in his conveyance. A few months subsequent to the mortgage B, a leasehold owner of one of the properties, approaches A and offers to surrender his lease in consideration of the release of the lessees' covenants therein. B's offer is accepted, and A (the owner of the fee simple, subject to the mortgage and the lease) takes a surrender of the lease accordingly, in which is expressed the intent to merge and extinguish the leasehold term in the fee simple, and the mortgagees are joined as a party to consent to the surrender to A.

(1) (*a*) Has A acquired an estate or interest of some kind which is not subject to the mortgage, and if so by what means can such estate or interest be made subject to the mortgage ? or

(*b*) Has the mortgagees' security been augmented ?

(2) Would it have been better for the leasehold owner to have surrendered his lease to the mortgagees to merge in their term of 3,000 years and for A to have joined to consent and to release the lessees' covenants ?

A. (1) (*a*) We think so. There can have been no merger of the unexpired residue of the ninety-nine year term in the freehold seeing that the mortgage term was the immediate reversion. We suggest that the mortgagor should now assign the unexpired residue of the ninety-nine year term to the mortgagees so as to merge in the mortgage term and subject to redemption.

(1) (*b*) No. See (1) (*a*) *supra*.

(2) Yes, this was, in our opinion, the proper procedure.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Mr. Baron Alderson was born on the 11th September, 1787. Called to the Bar in 1811, he worked for five years as a reporter in the King's Bench, his labours being enshrined in the volumes of "Barnwell and Alderson." In the active sphere he met with considerable success, being engaged in several notable trials, among them the first railway case in which he cross-examined George Stephenson. In 1830 he was raised to the bench of the Common Pleas without having taken silk. Nevertheless, the event was no surprise to the profession, which had regarded him as "heir apparent." Not long after, he was transferred to the Court of Exchequer. His playful wit made him exceedingly popular with juries, while his acute reasoning and profound learning carried great weight in the decisions of the full court. To his quick insight was attributable his only fault, a tendency to make up his mind too quickly.

THE BARE FACTS.

"Put it down. You disgrace yourself in a court of justice," cried the East Ham magistrate recently to a woman who rolled down her stocking and put her leg on the solicitors' table in order to exhibit an injury. Still, the naked truth must sometimes be revealed, and, in a very amusing "dog bite" case once heard at Brompton County Court, the proceedings were marked by a whole series of "comic strips." First, the victim was directed by his counsel to exhibit the bite on his arm. Then the advocate himself rolled up his trouser leg to exhibit a scar of his own, whereupon Judge Amos, who was trying the case, took off his robe and his coat to uncover a scar more impressive than either of the other two. The climax came when the usher, who had once been attacked from behind by a bull-dog, began to pull down his trousers to show the world the marks of his injury. By this time, a number of bare legs and arms were visible among the general public, and His Honour cried, "I shall put a stop to this, or else most people in court will be naked." By an odd coincidence, a savage dog attacked the victim's counsel just as he was leaving the court and tore a large piece out of his trousers.

GOWN AND SWORD.

During its recent field exercises the Inns of Court O.T.C. dwelt in the midst of the new Tank Brigade, an experience which may bear fruit in the addition of mechanised units to its strength. Thus will the Devil's Own begin to look diabolical. It was under Lord Erskine that the corps got its name by royal appointment. George III at a review asked their learned colonel who they were, and on being told exclaimed, "What! All lawyers? Call them the Devil's Own!" Lord Erskine, before embracing the law, had been a lieutenant in the 1st Foot. Nor was his case unique. Mr. Baron Watson served in the 6th Dragoons in the Peninsular and at Waterloo. Oddly enough, he died suddenly of apoplexy after charging the Grand Jury at Welshpool. Lord Campbell, L.C., was so proud of his service in the volunteers that he bequeathed his musket as an heirloom to his descendants. The late war saw two future judges in arms, Bennett and Langton, JJ. Indeed, to find so many lawyers in the field we have to go back to the Civil Wars, when Lord Littleton was at the same time Lord Keeper and Colonel of a regiment consisting of gentlemen of the Inns of Court and Chancery. He raised it for King Charles in 1644 and drilled it so strenuously that he died next year.

A FRENCH OBITUARY.

The French judge Audièvre, who not long ago decided against M. Daudet, the Royalist leader in a libel action, died recently, and the *Action Française* set up to his memory a column and a half of obituary abuse. Having said that he died in the full shame and scandal of a judgment to order which it qualified as "filthy and servile," and "an amazing ordure," the article went on to say that he was one of those who made Charon vomit, and ended with a regret that the departed had not survived to suffer decapitation in a Royalist revolution. Right or wrong, that would have been taken in this country as a monumental contempt of court, but perhaps France is different. Since Cobbett died, Englishmen have not been in the habit of letting themselves go in that way, but before that, invective was one of our fine arts. Take the lines on Ryenet, once a judge at the Cape of Good Hope:—

"The wolf and fox their attributes combined
To form the odius features of his mind
Where kennelled deep by shame, by fear unawed
Lurked supine, villainy, deceit and fraud,
Hypocrisy, servility and lust;
A petty tyrant and a judge unjust,
Partial and stern in every cause he tried,
He judged like Pilate, and like Pilate died."

Notes of Cases.

Railway and Canal Commission.

In re **the Application of Hamsterley Ganister Co. Ltd.**

MacKinnon, J., Sir Francis Taylor, K.C., and Sir Francis Dunnell. 22nd April.

MINING—CONVEYANCE BY AERIAL ROPEWAY—WAYLEAVE RENT—REASONABLE CHARGE—POWERS OF RAILWAY AND CANAL COMMISSION—MINES (WORKING FACILITIES AND SUPPORT) ACT, 1923 (13 & 14 Geo. 5, c. 20), s. 3 (2) (*b*).

The applicants in this case, Hamsterley Ganister Co. Ltd., the owners of a quarry at Hamsterley, Durham, extracted therefrom a mineral, ganister, used in the manufacture of fire bricks. The mineral was conveyed about 3½ miles by means of an aerial ropeway, which crossed the land of several owners, to a siding of the L. & N.E. Railway. The land of one William Frederick Brown was crossed by the ropeway for a distance of 1,600 yards, and the right to carry the ropeway over that land was the subject of wayleave for fourteen years at a rent of £200 a year. That wayleave expired in October, 1930, when the landowner in question offered to grant a new wayleave at the old rent of £200 a year. In the present application, the Railway and Canal Commission having power under s. 3 (2) (*b*) of the Mines (Working Facilities and Support) Act, 1923, to confer on owners of minerals a right of airway over the land of others on such terms as the Commission should consider proper, the applicants contended that the £200 a year asked by Mr. Brown was excessive and that a proper rent would be 2d. a yard, plus 7s. 6d. a trestle a year. That amounted altogether to about £18 a year.

MACKINNON, J., said that the court had to be satisfied that the making of an order was in the national interest, as provided by s. 6 of the Act of 1923. They were of opinion that the rent asked by Mr. Brown was grossly excessive. It was in the national interest that the applicants should obtain the use of the ropeway on reasonable terms, because, if they were unable to continue working at a profit, the quarries would be closed and many men thrown out of employment. Adopting the standard applied in *In re Application of Tilmanstone (Kent) Collieries, Ltd.*, 44 T.L.R. 167; [1928] 1 K.B. 599, of allowing 2d. a yard and 7s. 6d. a trestle, a fair rent in the present case would be £18 a year.

Sir FRANCIS TAYLOR and Sir FRANCIS DUNNELL agreed.

COUNSEL: *Edward Terrell*, for the applicants; *John Neal*, for Brown.

SOLICITORS: *King, Wigg & Brightman*, Agents for *Proud, Robinson & Roddam*, Bishop Auckland; *Field, Roscoe & Co.* Agents for *Warren & Allen*, Nottingham.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Shrewsbury Assizes.

Singer & Co. Ltd. *v.* D. E. Foulkes & Co. Ltd. and Others.

Wright, J. 15th July.

CONTRACT — CONVERSION — MOTOR VEHICLE — SHOW ROOM EXHIBITION—"SALE OR RETURN"—UNDISCLOSED SALE —DAMAGES FOR CONVERSION.

In this action the plaintiffs, Singer & Co., Ltd., motor-car manufacturers, claimed, *inter alia*, against the defendants, David Ewart Foulkes and H. Thorpe, directors of D. E. Foulkes & Co., Ltd., motor-car dealers, damages for the wrongful conversion of a new six-cylinder 14 cwt. delivery van chassis of which, it was alleged, the defendants became the bailees "on sale or return" under a written agreement. The van was to be exhibited in the defendants' showroom, and, by the terms of the agreement, should not be taken out on the road for demonstration or other purposes. The agreement further provided that the van was and should remain the plaintiffs' property until purchased and paid for by the defendant company, and that until so purchased and paid for the defendant company should have no right to deal with or dispose of the van in any manner whatever. It was pleaded that on the 1st October, 1930, without the knowledge or consent of the plaintiffs, the defendant company in breach of the contract wrongfully sold the van. The defendant Foulkes said that, by reason of a resolution of the directors of the defendant company, which was found by the receiver appointed by the debenture-holders to be hopelessly insolvent, he had no authority and was prevented from making any payment to the plaintiffs. The defendant Thorpe said that at all material times he had no knowledge or concern in the matter.

WRIGHT, J., giving a reserved judgment in London, said that, by the time the facts became known to the plaintiffs the defendant company was in serious financial difficulties, and on the appointment of a receiver by the debenture-holders, was found to be hopelessly insolvent. Beyond any doubt the defendant company had converted the plaintiffs' vehicle. The defendant company, however, had not appeared in the action and the claim which he had heard was against the two defendants personally. The defendant Foulkes was in charge of the sales department of the company. One of his salesmen told him that he could sell the vehicle subject to a part exchange, and thereupon Foulkes, who knew exactly the position and had signed the agreement with the plaintiffs, somehow found it consistent with his sense of business morality to authorise the salesman to carry out the sale, and in due course deliver the van. That being so, he (his Lordship) held that Foulkes was liable in conversion. It was perfectly true that a director as such was not personally liable for the tortious acts of the company, he was only liable if he had acted in such a way as to take upon himself the dealing which had constituted the wrongful act. He did not think that he could hold Thorpe liable in conversion; the evidence did not establish that he had actively intermeddled in the business, and he had nothing to do with the sales department. Judgment for the plaintiffs against Foulkes; judgment for Thorpe against the plaintiffs, with costs.

COUNSEL: *Richard A. Willes*, for the plaintiffs; *W. H. Williams*, for Foulkes; *F. O. Langley*, for Thorpe.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Pridmore and Nelson*, Coventry; *Somerville, Philpot & Co.*, for *Sandford and Meyric Hughes*, Shrewsbury; *Tamplin & Co.*, for *Sprott and Morris*, Shrewsbury.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

PUBLIC RECORD OFFICE.

It is announced that the search rooms of the Public Record Office will be closed for cleaning purposes from 14th September to 19th September inclusive. Special arrangements will be made for the transaction of urgent legal business.

Legal Notes and News.

Honours and Appointments.

The Board of Trade have appointed Mr. F. GREENWOOD to be Registrar of Companies and Registrar of Business Names.

Mr. C. C. GALLAGHER, formerly Registrar of Companies, has been appointed Assistant Secretary to the Board of Inland Revenue.

Mr. W. A. MCKEARS has been appointed Assistant Registrar in succession to Mr. F. N. Whittle, who is retiring.

The King has been pleased to give directions for the appointment of Mr. AUBREY CHARLES ROBINSON (Registrar-General and Registrar and Marshall, Supreme Court, Trinidad) to be Second Puisne Judge of Trinidad and Tobago.

The King has been pleased to confirm the appointment of Mr. F. W. WELLS DURRANT, K.C., to be a Member of the Privy Council of the Island of Jamaica.

Alderman G. B. LOMAS-WALKER, J.P., solicitor, of the firm of Booth, Wade, Lomas-Walker & Colbeck, solicitors, Leeds, has been appointed a Notary Public for the City of Leeds, and has also been appointed Legal Secretary to the Bishop of Ripon and Registrar of that Diocese.

Mr. J. W. SAXTON, Assistant Town Clerk of High Wycombe, has been appointed Clerk to the Frimley and Camberley Urban District Council.

Mr. G. W. MOSELEY, solicitor, the Deputy Clerk, has been appointed Clerk of the Peace to the County Council of Radnor.

Mr. FRANK FARMER, Town Clerk of Pontefract, has been appointed Clerk to the River Ouse (Yorkshire) Catchment Board.

Mr. ROBERT PRESTON has been appointed temporary Assistant Solicitor in the office of Mr. R. M. Middleton, Town Clerk of Lancaster.

Mr. T. A. IRWIN, Darlington, has been appointed an Assistant Solicitor in the office of Mr. Josiah Green, Town Clerk of the City of Bristol.

Mr. H. A. HURÉ, Chief Clerk in the Legal Section of the Department of the Surrey County Council, has been appointed to a similar position under the Kent County Council.

Mr. JAMES MACPHERSON, solicitor, a member of the firm of Fleming & Buchanan, Stirling, has been appointed interim Clerk of the Peace for the County of Stirling in the place of the late Mr. A. C. Buchanan.

Mr. J. SMELLIE, of the Town Chamberlain's Staff, Coatbridge, succeeds Mr. C. H. Jones (who has resigned) as Town Clerk of Penicuick.

Mr. A. E. WOODROW has been appointed Clerk to the Ely Urban District Council in succession to the late Mr. A. K. Campbell.

Mr. J. E. LIGHTBURN, Assistant Solicitor to the Kent County Council, has been promoted to be Deputy Clerk of the Peace and Deputy Clerk of the Council.

Mr. NORMAN GOODYEAR, Deputy Clerk to the Darfield Urban District Council, has now been appointed Clerk to that Council in succession to the late Mr. W. Robinson.

Mr. HAROLD BACKHOUSE, B.Sc.(Lond.), Town Clerk's Department, Leyton, has now been appointed Assistant Solicitor in that department in the place of Mr. D. MUSHER, LL.B.(Lond.).

Mr. REGINALD W. BELL, LL.M., Solicitor, Leamington, has been appointed Assistant Parliamentary Officer to the London County Council.

Mr. A. F. FARISH, solicitor, Tunbridge Wells, has been elected Senior Warden of the Coachmakers' and Coach Harness Makers' Company.

Wills and Bequests.

Mr. Eardley John Norton, of Bexley, Kent, barrister-at-law, who died on 13th July, aged seventy-nine, left estate of the gross value of £43,470, with net personalty £42,905. He left £1,000 to his old clerk, Satis Chandra Sen, of Calcutta.

Mr. Arthur Clifford Fountaine, of Croydon, of the firm of Gibson & Weldon, solicitors and law tutors, of Chancery Lane, W.C., left estate of the gross value of £32,856, with net personalty £24,834.

Mr. Edwin William Smith, of Isleworth, for many years clerk to Mr. Justice Hill, left estate of the gross value of £1,931, with net personalty £803.

CENTRAL CRIMINAL COURT.

The September Session of the Central Criminal Court will open on Tuesday next, 8th September.

MINISTRY OF HEALTH.

The Minister of Health, The Right Hon. Neville Chamberlain, M.P., has appointed Mr. A. Nevil Rucker to be his Private Secretary, and Mr. W. H. Howes to be his Assistant Private Secretary.

CERTIFIED ACCOUNTANTS.

The next examinations of the London Association of Accountants will be held on 1st, 2nd and 3rd December in London, Glasgow, Edinburgh, Newcastle, Birmingham, Belfast, Cork, Dublin, Leeds, Sheffield, Manchester, Liverpool, Cardiff, Bristol, Nottingham, Hull and Plymouth. Women are eligible under the Association's regulations to qualify as certified accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the office of the Association, 50, Bedford-square, London, W.C.1.

HOURS IN THE COURTS.

Lord Wrenbury might have remarked another difference in the sittings of the judges in the Chancery Division then and now. Some forty to fifty years ago the Master of the Rolls (Sir George Jessel) and the Vice-Chancellors would, two days each week, after sitting in court until 4 o'clock, adjourn to sit in chambers to determine interlocutory business. This work not infrequently absorbed two hours. Now two whole days a week are set apart for this type of business, the lists being often disposed of before the luncheon hour.—Mr. W. Tyndale Moore in *The Times*.

JUSTICE WITH WHISKERS.

A statue of Justice, which forms the keystone of the archway of Thames House, facing the river along Grosvenor-road, departs from the traditional figure of a young woman and portrays an elderly and dignified man. The 6-ft. figure is blindfolded and has a long drooping moustache which meets side whiskers. The hands hold a pair of scales and a sword. The sculptor is Mr. C. S. Jagger, who produced the Royal Artillery memorial at Hyde Park Corner.

TRAFFIC ACT AND HIRE-PURCHASE.

When a motor-cyclist was summoned at the North London Police Court on Saturday for failing to enter particulars of his name and address in the registration book and forward it to the London County Council, it was stated that a firm of motor agents notified the council that the machine had been sold to him. He did not send any notification of the purchase. The defendant said he understood that as he acquired the machine under a hire-purchase agreement he was only a hirer, and that until completion of the payments the owners were the motor agents. The magistrate, after consultation with the clerk, pointed out that the Road Traffic Act defined the owner of a machine sold under a hire-purchase agreement for the purposes of the Act as the person in possession of the machine. The summons, however, was dismissed.

SENIOR ADVOCATE DEPUTE.

Mr. J. G. Thom has been appointed Senior Advocate Depute to the Lord Advocate for Scotland, in the place of Mr. Robert Gibson. Mr. Gibson, who is prospective Labour candidate for North Edinburgh, resigned the office, as he stated that the action of the Labour Party under Mr. Henderson had his complete approval.

Mr. Thom served with the Gordon Highlanders in the war and won the D.S.O. and M.C.

Sir Henry Maddocks, K.C., of Northwood, Middlesex, and of Brick-court, E.C., Recorder of Birmingham since 1925, who died on 9th June, aged sixty, left estate of the gross value of £11,673, with net personalty £127.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th July, 1931) 4½%. Next London Stock Exchange Settlement Thursday, 10th September, 1931.

	Middle Price 2 Sept. 1931.	Flat Interest Yield.			Approximate Yield with redemption		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	87½	4	11	5	—		
Consols 2½%	57xd	4	7	9	—		
War Loan 5% 1929-47	100½	4	19	6	—		
War Loan 4½% 1925-45	98	4	11	10	4	14	0
Funding 4% Loan 1960-90	90½	4	8	5	4	9	0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	92xd	4	7	0	4	8	10
Conversion 5% Loan 1944-64	102½	4	17	7	4	17	3
Conversion 4½% Loan 1940-44	97½	4	12	4	4	15	0
Conversion 3½% Loan 1961	77½xd	4	10	4	—		
Local Loans 3% Stock 1912 or after	64½xd	4	13	0	—		
Bank Stock	248½	4	16	7	—		
India 4½% 1950-55	75	6	0	0	6	11	0
India 3½%	54½xd	6	8	5	—		
India 3%	47xd	6	7	8	—		
Sudan 4½% 1939-73	97½	4	12	4	4	12	6
Sudan 4% 1974	89½	4	9	5	4	11	9
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	86½	3	9	4	3	18	0
Colonial Securities.							
Canada 3% 1938	90	3	6	8	4	14	0
Cape of Good Hope 4% 1916-36	96	4	3	4	4	14	0
Cape of Good Hope 3½% 1929-49	84	4	3	4	4	16	9
Ceylon 5% 1960-70	102	4	18	0	4	17	8
*Commonwealth of Australia 5% 1945-75	72½	6	17	11	7	0	0
Gold Coast 4½% 1956	98	4	11	10	4	12	6
Jamaica 4½% 1941-71	99	4	10	11	4	11	0
Natal 4% 1937	94½xd	4	4	8	5	5	0
*New South Wales 4½% 1935-1945	55	8	3	8	8	13	9
*New South Wales 5% 1945-65	63	7	18	9	8	0	6
New Zealand 4½% 1945	90	5	0	0	5	11	3
New Zealand 5% 1946	98½	5	1	6	5	2	6
Nigeria 5% 1950-60	101	4	19	0	4	17	6
*Queensland 5% 1940-60	67xd	7	9	3	7	18	10
South Africa 5% 1945-75	102	4	18	0	4	17	6
*South Australia 5% 1945-75	73	6	17	0	7		0
*Tasmania 5% 1945-75	75½	6	12	5	6	15	0
*Victoria 5% 1945-75	70	7	2	10	7	6	0
*West Australia 5% 1945-75	73	6	17	0	7	0	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	65	4	12	4	—		
Birmingham 5% 1946-56	102xd	4	18	0	4	16	0
Cardiff 5% 1945-65	101xd	4	19	0	4	19	0
Croydon 3% 1940-60	74xd	4	1	1	4	13	3
Hastings 5% 1947-67	101	4	19	0	4	18	9
Hull 3½% 1925-55	84	4	3	4	4	12	3
Liverpool 3½% Redeemable by agreement with holders or by purchase	76xd	4	12	1	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	55	4	10	11	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	65	4	12	4	—		
Metropolitan Water Board 3% "A" 1963-2003	65	4	12	4	—		
Do. do. 3% "B" 1934-2003	65	4	12	4	—		
Middlesex C.C. 3½% 1927-47	88	3	19	7	4	11	3
Newcastle 3½% Irredeemable	74	4	14	7	—		
Nottingham 3% Irredeemable	66	4	10	11	—		
Stockton 5% 1946-66	101	4	19	0	4	18	9
Wolverhampton 5% 1946-56	102	4	18	0	4	16	9
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	70	5	14	4	—		
Gt. Western Railway 5% Rent Charge	97	5	3	1	—		
Gt. Western Rly. 5% Preference	72½	6	17	11	—		
L. & N.E. Rly. 4% Debenture	68	5	17	8	—		
L. & N.E. Rly. 4% 1st Guaranteed	59	6	15	7	—		
L. & N.E. Rly. 4% 1st Preference	36	11	2	3	—		
L. Mid. & Scot. Rly. 4% Debenture	71	5	12	8	—		
L. Mid. & Scot. Rly. 4% Guaranteed	62	6	9	1	—		
L. Mid. & Scot. Rly. 4% Preference	37	10	16	3	—		
Southern Railway 4% Debenture	75	5	6	8	—		
Southern Railway 5% Guaranteed	93½	5	6	11	—		
Southern Railway 5% Preference	66½	7	10	5	—		

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.

SOLICITOR (newly admitted), Public School and LL.B., with conveyancing experience, seeks post where further experience may be gained; experienced speaker and would undertake advocacy.—Box 710, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (35), Cambridge graduate, desires Managing Clerkship. Good general experience.—Apply "Alpha," Box 320, Solicitors' Journal, 29, Breams-buildings, E.C.4.

JUNIOR Clerk, shorthand-typist, age 20, with knowledge of Courts and public offices, seeks post as outdoor clerk with good firm; 4 years' experience in solicitors' offices; good references; salary £2 per week.—Box 740, Solicitors' Journal, 29 Breams-buildings, E.C.4.

AN EXPERIENCED unadmitted Managing Clerk with good all-round knowledge of conveyancing, probate, trust and company work, desires engagement and is capable of acting without supervision. West End of London preferred.—Write Box 662, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EX-OFFICERS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion and the name of this paper.

RETIRED Army Officer, 30, intelligent, good education, smart, energetic, reliable, temperate habits; knowledge Army signalling and office routine; excellent references; disengaged; willing accept any paid occupation; good personality; small salary accepted. 12764

CAPTAIN, T.A., 26, Public School, sound experience shipping and export coal trade, would consider secretarial, administrative or sales appointment; travelled abroad; fluent French. 13386

TRAVELLER, 36, Reserve Officer, seven years' provisions, good selling record, desires position with reputable firm, London or East Anglia; salary and commission; highest credentials. 12557

COMPANY Secretary and Registrar, 37, left present employment end of August, requires responsible employment; experience company law, capital issues, transfer and dividend work; fluent speaker, tactful negotiator, accustomed to control staff. 2585

VAN SALESMAN or Chauffeur-Mechanic, 36, married, seven years' London driving, reliable; highest references. 13221

EX-OFFICER, Indian Army, 34, fluent Hindustani, sound knowledge agriculture, auctioneering estate agency, seven years' insurance experience; knowledge book-keeping accounts; experienced motor driver; desires post plantation supervisor, storekeeper, chauffeur, club steward or anything suitable; home or abroad. 13390

PRACTICES AND PARTNERSHIPS.

SOLICITOR wishes to purchase established conveyancing, trust and family practice in London, to amalgamate with existing practice. Principals only should apply.—Box 839, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—Established London suburban practice near busy county and police courts; splendid opportunity for young solicitor; part purchase price can remain.—Apply Box 829, Solicitors' Journal, 29, Breams-buildings, E.C.4.

COLONIAL Firm practising in East Africa would entertain applications for purchase of share in partnership.—Particulars in confidence, Box 807, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, 37, Oxford Graduate, C.O., of wide experience in conveyancing, company, trust and family business, seeks partnership yielding £1,000 to £2,000 per annum net in well-established firm in Liverpool.—Box 770, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor, admitted 1930, desires Junior Partnership in general practice after short preliminary clerkship. Experienced in conveyancing, probate and general country practice, including some advocacy. Capital available.—Box 737, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (31), formerly a member of the Bar, desires to purchase partnership in well-established firm in London or Southern Counties; thorough general experience in London and provinces; capital available.—Box 686, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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OFFICE, with telephone extension, available in Chartered Accountants' offices in Bedford-row. Suit solicitor or London agent of country firm. Messages taken, etc. £15 per quarter.—Apply Box 824, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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TWO very sound borrowers each require first mortgage £1,600 at 5½ per cent. Security one freehold, one leasehold, house, both pre-war, in good condition. Leasehold 49 years unexpired.—Particulars apply Box 834 Solicitors' Journal, 29, Breams-bldgs, E.C.4.

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BOOKS AND PUBLICATIONS.

FOR SALE.—Halsbury's Laws of England, with latest Supplement, also Mews Digest to 1930. All in excellent (practically new) condition.—Box 831, Solicitors' Journal 29, Breams-buildings, E.C.4.

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FOR SALE.—Bound Volumes of "Punch," 1879, 1880 and 1881, "Judy," 1877, 1877-8, 1879, 1880 and 1881, and "Fun," 1877, 1878, 1880 and 1881. What offers?—Replies to "Insurance," Box 811, Solicitors' Journal, 29, Breams-buildings, E.C.4.

INFORMATION REQUIRED.

2s. per line.

ALEXANDER GEORGE MACKAY, otherwise ALASTAIR GEORGE MACKAY, son of Alexander Murdoch Mackay and Ann Mackay, née Pugh, who left England probably between 1895 and 1900, or any descendants or anyone having any KNOWLEDGE of his WHEREABOUTS is requested to COMMUNICATE with Messrs. Tamplin, Joseph, Ponsonby, Ryde & Flux, Solicitors, 45, Russell-square, London, W.C.1, England.

RE FRED LESLIE BROWN, deceased, formerly of the Igna Engineering Co., Ltd., of Dudley, and who frequently resided at the Palace Hotel, London, and Yenton Hotel, Erdington, Birmingham.—Will anyone able to give INFORMATION concerning the ESTATE of the above please COMMUNICATE with Bailey, Cox & Co., 10A, Temple-row, Birmingham?

RE GORDON RUSSELL, Deceased.—Will any SOLICITOR or other person having KNOWLEDGE of any WILL made by the above-named deceased, late of "Goodtrees" Cowden, Kent, and 36, Sydney-street, Chelsea, S.W.3, who died on the 5th day of July, 1931, please COMMUNICATE with BARRY O'BRIEN & CO., Solicitors, of 32, Victoria-street, Westminster, S.W.1.

MRS. MAUD DRUMMOND, formerly of 6, Lincoln-street, Sloane-square, S.W.3, understood to have been a nurse at Hawick, N.B., during the war, or anyone knowing of her whereabouts, please write to J. C. and A. Steuart, W.S., 25, Rutland-street, Edinburgh.

IF NELLIE GRACE WILSON, last heard of nine years ago at 54, Park-street, East Greenwich, S.E.10, will COMMUNICATE with Messrs. Stephens & Son, Solicitors, 41, Railway-street, Chatham, Kent, she will hear of something to her advantage.

BOISRAGON, deceased.—COL. GUY HUDLESTON, V.C.—Will anyone having KNOWLEDGE of existence or whereabouts of a WILL or TESTAMENTARY DOCUMENTS or any other papers relating to this gentleman's affairs please COMMUNICATE immediately with Messrs. Finch, Jennings & Tree, 2, Gray's Inn-square, W.C.2.

MRS. ADA LATCHAM, deceased.—Will any Solicitor or other person having any KNOWLEDGE of any WILL made subsequent to the 28th January, 1904, by the above-named deceased, late of 3, Seavale-road, Clevedon, Somerset, who died on the 18th March, 1931, please communicate with Messrs. WEBBER & BULL, Solicitors, 34, Baldwin-street, Bristol.

THOMAS HODGSON, deceased, late Solicitor of Birmingham, died 31st March, 1891.—INFORMATION is desired as to the present addresses of two Grandchildren of the above, viz., MAGGIE HODGSON and HERBERT JOHNSON, by Messrs. Donaldson & Co., of 4 Bloomsbury Place, London, W.C.1, Solicitors on behalf of the Executor of Miss I. E. BARDSWELL, deceased.

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